IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.43384-M of 2004
Date of Decision:- 09.02.2007

Sunil Kumar ....Petitioner(s)

through
Mr.R.K.Jain, Advocate

vs.

State of Haryana & anr. ....Respondent(s)

through
Mr.R.D.Sharma, DAG, Haryana.
Mr.P.R.Yadav, Advocate.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

The prayer in this petition is for quashing of F.I.R.No.123 dated 14.5.2004 under Section 363/366 IPC registered at Police Station Sohna, District Gurgaon.

As per the allegations contained in the F.I.R., the petitioner had an evil eye on the daughter of the complainant, namely, Rajwati. On 22.4.2004, when the complainant and his other family members were attending the marriage in the neighbourhood and their daughter Rajwati was all alone at home, the petitioner abducted and took her away to some unknown destination.

The petitioner, however, has a different story to tell. According to him, he and daughter of the complainant (Rajwati) developed liking for each other and both of them being major, got married to each other before the Registrar, Hindu Marriages at Mathura on 2.3.2004 and a certificate (Annexure P-2) to this effect has been issued by the said Competent

Authority.

Pursuant to the impugned F.I.R., when the petitioner was apprehended along with Rajwati, she appeared and made a statement before the learned Additional Sessions Judge, Gurgaon (Copy appended as Annexure P-3) to the effect that she is about 22 years of age and is major and had gone with the petitioner on her own in order to marry him. She also deposed that both of them have solemnized the marriage without any pressure. She also gave an affidavit to this effect, a copy of which is appended as Annexure P-4.

The petitioner has now come up with this petition for quashing of the F.I.R., *inter alia,* on the ground that since the daughter of the complainant, namely, Rajwati was major and competent to marry on her own, the allegations of her abduction and/or enticing her to accompany the petitioner, are totally unfounded. It is pointed out that now a child has also born out of the wedlock, who is about 18 months old.

Notwithstanding the above-noticed stand taken by the complainant's own daughter, it is contended by learned counsel for the complainant that Rajwati was below 18 years on the date of 'abduction' as well as when she allegedly performed marriage with the petitioner, all the ingredients of an offence under Section 363/366 IPC are made out.

Learned State counsel, however, does not dispute the fact that as per the investigation report, the petitioner and the daughter of the complainant have married to each other and they are now happily settled as husband and wife.

The question which requires consideration is that even if the daughter of the complainant was below 18 years of age at the time when she

got married to the petitioner, whether the continuation of the impugned criminal proceedings would serve the cause of criminal justice system ? An offender should undoubtedly be prosecuted with full zeal but equally important is that no one should be persecuted.

In the case in hand, the issue as to whether Rajwati was minor or major on the date when she got married, has become inconsequential with the efflux of time and due to subsequent events. As per her own deposition before the learned Additional Sessions Judge as also the stand taken by the police, they are married and have one issue out of the wedlock. The fact that Rajwati left her father's house on her own and accompanied the petitioner to marry him, completely demolishes the ingredients of Section 363/366 IPC. The only and irresistible conclusion would be that continuation of the impugned proceedings is an exercise in futility and an abuse of process of law.

Consequently, this petition is allowed; the impugned F.I.R.No.123 dated 14.5.2004 under Section 363/366 IPC registered at Police Station Sohna, District Gurgaon and all the proceedings arising therefrom are hereby quashed.

February 09, 2007 **(SURYA KANT)**
poonam **JUDGE**